

PRO SE **HANDBOOK**



Last revised: September 2016

Disclaimer: The contents of the Pro Se Handbook are provided for informational purposes only and do not constitute legal advice. This handbook does not take the place of the Federal Rules, this Court's Local Rules, or the individual practices of the Judges of this Court. If there is any conflict between this handbook and the applicable rules, the rules govern. This handbook is not intended for use by litigants who are incarcerated.

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WELCOME/INTRODUCTION

Welcome to the United States District Court for the Western District of Virginia. This handbook has been prepared specifically for individuals who will be appearing *pro se* to file and pursue a **CIVIL** case in this Court. A *pro se* litigant is someone who has chosen, for whatever reason, to represent himself/herself as a party to a lawsuit. The purpose of this handbook is to provide the *pro se* litigant with a practical and informative resource that will assist in the decision-making process and in the filing of a civil lawsuit when choosing not to retain the aid of a licensed attorney. You should never rely entirely on this handbook, and it should not be your only resource. Rather, this handbook should be considered a procedural aid or a starting point to help you should you choose to file a lawsuit and represent yourself. This handbook is **NOT** intended for people who want to defend themselves in a criminal case without an attorney or those who are incarcerated.

The rules and procedures that a party must follow in a civil case may be difficult to understand. You should seriously consider the risks of representing yourself and the benefits of obtaining professional legal assistance. If you decide to represent yourself, you are responsible for following the Federal Rules of Civil Procedure, the Local Rules of this Court, and the law. You should **ALWAYS** review the law before taking any action in your lawsuit. If you have questions or need to know more about the law, it is up to you to research the answers yourself. Employees of the Court can answer general questions about court procedures, but **they cannot give legal advice**, as they are prohibited under Title 28 of the United States Code (U.S.C.), Section 955. For example, they **cannot** do any of the following:

- Recommend a legal course of action or suggest ways to help you win your case;
- Explain the result of taking or not taking an action in a case;
- Answer whether jurisdiction is proper in a case;
- Answer whether a complaint properly presents a claim;
- Give you “inside information” about judges or other court personnel or predict when a judge may decide any issue;
- Interpret the meaning of any judicial order;
- Provide information on or interpret the law, federal rules, local rules, or standing orders;
- Calculate response times or deadlines; or
- Conduct legal research.

Employees of the Court **can** do the following:

- Provide basic instructions on how to execute a task (e.g., number of copies, use of forms, etc.);
- Provide information as to compliance with this Court’s policies; and
- Provide information that can be found on a case docket.

The Court's website address is <http://www.vawd.uscourts.gov>. The website contains links to the [Federal Rules of Civil Procedure](#), the [Local Rules of this Court](#), [Standing Orders](#), and other useful information. All of the forms mentioned in this handbook can be found under the [Forms](#) link on the website. All Administrative Office of the Courts (AO) forms mentioned can be found under the [AO National Forms](#) link.

In our continuing effort to provide better service and information to the public, we welcome any comments or suggestions for improving this handbook. Please send your comments to: Clerk of Court, 210 Franklin Road S.W., Suite 540, Roanoke, VA 24011-2208.

A WORD OF CAUTION

Representing yourself in a civil suit can be a difficult and time-consuming ordeal and carries certain risks and responsibilities that *pro se* litigants should be aware of before they proceed. If you decide to proceed *pro se*, you will be responsible for learning about and following all the procedures that govern the legal process. Before you make the decision to become a *pro se* litigant, it is strongly advisable to at least find out if you have other options. Because representing yourself in a lawsuit is difficult, the Court urges you to think seriously about getting an attorney, if at all possible.

Rule 11 of the Federal Rules of Civil Procedure prohibits filing lawsuits that are clearly frivolous or filed merely for purposes of harassment. If after reviewing your complaint the Court determines that you have filed a lawsuit for an improper or clearly unnecessary purpose, it may impose sanctions against you, including ordering you to pay a fine to the Court or to pay the legal fees of the person against whom you filed the lawsuit. In certain types of cases, if you lose, you may be required to pay the legal fees of the winning party. In all cases, if you lose you may be required to pay some of the costs the winning party incurred in the course of the lawsuit.

ALTERNATIVES TO FILING A LAWSUIT

As you may soon find out, bringing a lawsuit takes a considerable amount of time, money, and energy. Before filing a lawsuit, you may want to consider other alternatives to solve your dispute or problem. Here are a few suggestions:

- **Attempt to Work Things Out:** Consider talking directly to the person/people who you think might be responsible for causing the problem. If you approach someone respectfully and give them a real opportunity to talk, that person may be more likely to respond in a positive manner than if your first contact after the problem arises is to threaten that person with a lawsuit.
- **Consider Contacting Governmental or Private Agencies:** Consider whether there are other processes you could use, or agencies you could enlist, to address your problem. Sometimes there is a governmental or private agency that can address your problem or lend you assistance. Examples of such agencies include the Equal Employment Opportunity Commission (or an equivalent state or local agency), the local police review board, a consumer protection agency, the local Commonwealth Attorney's Office, the Better Business Bureau, and private professional associations (e.g., associations of contractors, accountants, securities dealers, architects, and engineers, state licensing boards, etc.) that hear business-related complaints.
- **Contact an Attorney:** An attorney can help you make sure that federal court is the right place to solve your problem. An attorney can also provide you with more information about resources that may help you. If you are representing yourself, the judge will still expect you to state your complaints clearly, to meet all of your deadlines, and to follow the rules. An attorney can help explain these rules.

There are organizations throughout the Commonwealth of Virginia that provide free legal services, including litigation services, to low-income residents. To find a legal aid office near you, visit <http://www.valegalaid.org/VA/index.cfm>, or you can call Virginia's Legal Aid Hotline at 1-866-LEGLAID (1-866-534-5243) to reach your local legal aid office.

Also, the Virginia State Bar runs a lawyer referral service that can put you in contact with a local attorney who has indicated an interest in handling your type of problem. If you decide to make an appointment with the attorney to which you are referred, you will be entitled to meet with that attorney for up to one half-hour for a reasonable fee. The contact information for the Virginia State Bar Lawyer Referral Service is 1-800-552-7977 (Monday through Friday, 9:00 a.m. to 5:00 p.m.; Closed on state holidays).

- **Start in a Small Claims Court:** In some cases, you may have the option of filing a case in small claims court, which is designed to be used directly by people without formal training in the law. These courts are part of the Virginia (not federal) court system.

Visit: http://www.courts.state.va.us/resources/small_claims_court_procedures.pdf
for more information.

- **Try Mediation:** Dispute resolution services, such as mediation or arbitration, may be faster and less expensive than taking a case to court. Mediation encourages parties to communicate clearly and constructively to find common ground or to identify solutions that can serve the parties' real interests.

The Conflict Resolution Center

Telephone Number: 540-342-2063

<http://www.conflictresolutioncenter.us/>

Virginia Association for Community Conflict Resolution

Telephone Number 1-888-VAPEACE (827-3223)

<http://www.vaccr.org/>

SEVEN QUESTIONS TO CONSIDER BEFORE FILING A LAWSUIT

If you have decided that none of the above alternatives will be sufficient to address your problems, there are still issues that you should consider before filing a lawsuit. Ask yourself these seven important questions **BEFORE** you file a case in this federal court.

Please note that this is a threshold list for filing a lawsuit and is not intended to suggest what the outcome may be. However, these seven questions are essential considerations before filing a lawsuit in federal court. You should also be aware that even if you answer “yes” to all seven of these questions, and you believe you should prevail in your lawsuit, that does not mean that you will ultimately prevail, as winning and losing are decided by the judge and/or jury.

The following are seven questions that you should ask yourself before filing a lawsuit in this federal court:

1. **VALID CLAIM: Have I suffered a real injury or wrong?**

In order to maintain a lawsuit against someone, the person you are suing must have caused you to be harmed in some real, concrete way. Furthermore, you must be asserting your own personal legal interests. Typically a person may not sue to assert the rights of someone else. In other words, a litigant must assert that he or she has personally suffered the injury, or that a distinct group of which he or she is a part has suffered the injury. Moreover, the litigant must have actually suffered the harm already, or must be about to suffer the harm “imminently,” meaning the litigant will actually suffer the harm in the immediate future without court intervention.

2. **JURISDICTION: Is a federal court the appropriate place to file my lawsuit?**

In general, a court must have the power to decide a particular case; this is called **jurisdiction**. There are two court systems in the United States: the **state** court system and the **federal** court system. In Virginia, the state courts are the courts of “general jurisdiction,” which means that they can hear and decide almost any kind of legal controversy between two or more parties. Virginia state courts typically hear cases relating to civil, criminal, domestic (divorce and child custody), probate, and property matters, in accordance with the laws of the Commonwealth of Virginia.

Federal courts, on the other hand, only have jurisdiction over certain limited types of cases and controversies. Matters typically heard by the federal courts involve violation of federal laws; admiralty and maritime matters; United States patent, trademark, and copyright matters; bankruptcy proceedings; and proceedings against ambassadors, consuls, and ministers. A federal court has jurisdiction when the **United States is a defendant** in the action. Additionally, a federal court has jurisdiction to hear cases involving a **federal question** or **diversity of citizenship** between the parties. See 28 U.S.C. § 1331 and § 1332.

Lynchburg:	<u>Counties:</u>	Amherst, Appomattox, Bedford, Buckingham, Campbell, Cumberland, Rockbridge
	<u>Cities:</u>	Bedford, Buena Vista, Lexington, Lynchburg
Roanoke:	<u>Counties:</u>	Alleghany, Bland, Botetourt, Carroll, Craig, Floyd, Franklin, Giles, Grayson, Montgomery, Pulaski, Roanoke, Wythe
	<u>Cities:</u>	Clifton Forge, Covington, Galax, Radford, Roanoke, Salem

The address for the United States District Court, Eastern District of Virginia is:

Spottswood W. Robinson III and Robert R. Merhige, Jr. Federal Courthouse
701 East Broad Street
Richmond, VA 23219
Telephone Number (804) 916-2200
<http://www.vaed.uscourts.gov/>

4. STATUTE OF LIMITATIONS: Will my claim be timely if I file it now?

Usually a claim must be filed within a certain period of time after an injury occurs or is discovered. This rule is called the **statute of limitations**, and the length of the statute of limitations varies depending on the type of claim. Whether the statute of limitations will prevent you from prevailing on your claim is a legal question which may require you to do some legal research. You should be certain that the relevant statute of limitations has not expired before you file a lawsuit, or the court may be required to dismiss your claims.

5. EXHAUSTION: Have I pursued all other available remedies prior to filing my lawsuit?

You should be aware that, in some instances, it is necessary for you to pursue certain remedies **BEFORE** you can properly pursue a claim in federal court. This is called **exhaustion**. For example, you must exhaust administrative remedies before filing a lawsuit: (1) if you are appealing a federal agency's decision; (2) if you wish to sue a current or former employer for employment discrimination; or (3) if you intend to bring suit under the Federal Tort Claims Act.

(1) Appeal of Federal Agency's Decision (Administrative Grievance Procedures): People frequently want to appeal the decision of a governmental agency that affects them. For example, a person may want to overturn the decision of the Social Security Administration to deny an application for social security benefits.

If you want to appeal the denial of a benefit that is provided through an agency of the United States government, you must pursue all of the administrative procedures established by the agency for seeking review of its ruling before you file a lawsuit. Only after you have pursued all available administrative remedies, and you still

believe you are entitled to a benefit that you have not received, may you initiate a lawsuit.

- (2) Employment Discrimination Claims: A person who believes he or she has been illegally discriminated against by an employer may bring a lawsuit against the employer under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), or the Equal Pay Act. However, with the exception of the Equal Pay Act, before a person can bring such a lawsuit, he or she must first file a complaint with either the Equal Employment Opportunity Commission (EEOC) or the Virginia Human Rights Council. Please contact the EEOC (www.eeoc.gov) or the Virginia Human Rights Council (<http://chr.vipnet.org/>) for further details.
- (3) Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671-2680: Under the FTCA, an individual may sue the United States for loss of property or other injuries resulting from the tortious or negligent conduct of one of its employees, only if that individual exhausts administrative remedies through the appropriate federal agency prior to filing suit in federal court. See 28 U.S.C. §§ 2679(b), 2675(a). For example, an individual who slips and falls in a post office due to a postal employee's negligence must first exhaust all administrative remedies by submitting to the U. S. Postal Service an executed Standard Form 95 or other written notification of the incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property, personal injury, or death alleged to have occurred by reason of the incident. Only after that administrative claim is reviewed, and a notice of final agency action on the claim has been received, may the complainant file a lawsuit in federal court. See 28 U.S.C. § 2675; 28 C.F.R. § 14.2.

6. DEFENDANTS: Am I able to determine and name the proper defendants for my action?

When determining what person or entity you should name as a defendant in your lawsuit, there are several factors you should consider. First, you generally must show that **EACH** person or entity you are suing engaged in wrongful conduct that caused you harm. Thus, you should name a defendant only if you are able to describe his or her actions or inactions that you believe were wrongful and how you believe those actions harmed you. Sometimes the proper defendant is identified by the statute under which you are suing.

Second, you must list individuals or entities by their proper names whenever possible. Avoid suing groups of people such as “the personnel department” or “the medical staff.” Also, you cannot pursue a lawsuit against “John Doe” or “Jane Doe” defendants. If you cannot identify and serve one of your defendants, you will not be able to prevail in your lawsuit against that person or entity (service of process will be explained more fully in the next section). It is your responsibility, and not the duty of the Court, to ascertain the identities and addresses of those individuals whom you believe caused you to be injured.

Third, you should be aware that some people cannot be held liable for actions they take while performing the duties of their jobs. This is called immunity. For example, when a judge decides a case, he or she is generally immune from lawsuits for actions taken in the process of deciding that case. Similarly, prosecutors are generally immune from liability for actions they take in prosecuting or failing to prosecute individuals. Entities such as state and federal agencies, courts, and legislatures also have immunity against many types of legal claims.

There may also be other legal defenses that a person can assert which will protect him or her from liability.

7. SUPPORTING FACTS: Will I be able to establish sufficient facts to support my claims?

In a civil lawsuit, the burden is on the plaintiff to prove by a preponderance of the evidence that the defendant(s) violated the plaintiff's rights. Therefore, in order to win a case, a plaintiff must be able to present facts that support his or her claims. Asserting the mere conclusion that the defendant(s) caused you harm or violated your rights will be insufficient.

Before you begin a lawsuit, be sure that you can allege enough facts to support your claim that the defendant(s) violated your rights. Such facts should include who each defendant is, specifically what he or she did or did not do that you believe was wrongful, when the incident took place, and where the incident happened. You should also be able to identify how each defendant's actions or inactions caused you harm.

In order to prove your case, you must be able to provide evidence, including your own testimony, that supports the facts you allege. In addition, you need to be able to identify any witnesses whom you believe observed the incident. You may also be called upon to present physical evidence such as photographs, letters, emails, police reports, medical records, or other proof.

In conclusion, it is important that you consider all of these questions before you file a case. After all of these factors have been considered, you must still follow the procedures set out by the particular court with which you decide to file your case. If your case needs to be filed in a court other than the United States District Court for the Western District of Virginia, you should contact the Clerk's Office of that court for information regarding local rules and procedures for filing your case.

BRINGING YOUR LAWSUIT

If you decide to bring a lawsuit, the following is provided to guide you in the various steps that you will need to take. The person filing the lawsuit is known as the **PLAINTIFF**. The person, business or organization the lawsuit is being filed against is the **DEFENDANT**. The plaintiff and defendant are also called **PARTIES** or **LITIGANTS**. The parties should be identified as either the plaintiff or defendant on all pleadings and documents filed with the Court. You may find it helpful to use these terms along with the party's name (e.g., "Plaintiff Smith" or "Defendant Smith"), to help identify who you are referring to if there are many parties to the lawsuit.

Write a Complaint

All cases are comprised of documents prepared and filed by litigants. The first document that must be filed is called a **COMPLAINT**. The function of the complaint is to tell the Court and defendant(s) the reason(s) for filing the lawsuit and what relief is desired. The complaint is made up of four main parts:

- a. The **NAME** and **ADDRESS** of the plaintiff and the defendant(s). These are usually listed in the first and second paragraphs respectively. If there is more than one defendant, each defendant's name and address should be listed in separate additional paragraphs.
- b. The **JURISDICTION** or reason you are filing the case in federal court. See 28 U.S.C. § 1331, et seq.
- c. The **ALLEGATIONS** and claims that you are making against the defendant(s). Each allegation should be placed in a short, clearly-written paragraph. See Rules 8 and 10 of the Federal Rules of Civil Procedure.
- d. The **RELIEF** you are seeking in the lawsuit. You can seek to recover money damages from the defendant(s) or to have the Court order the defendant do or stop doing something. This information is usually written in the last paragraph of the complaint.

The complaint must also state the complete **CAPTION** (or heading) of the case listing **ALL** of the parties. Each party must be named in the caption. An example of the correct caption for a complaint to be filed in this district is:

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
_____ DIVISION**

(NAME(S)),)
)
 Plaintiff(s),)
)
 v.) **Civil Action No.:** (leave blank/assigned by clerk)
)
 (NAME(S)),)
)
 Defendant(s).)

COMPLAINT

1. Each paragraph should be numbered except for the paragraph that asks the Court for relief. If you believe that you are entitled to have your case decided by a jury, in a paragraph following the relief requested, you must indicate that you demand a trial by jury. See Rule 38 (b) of the Federal Rules of Civil Procedure.

2. Do not worry that your complaint is not professionally written. A complaint does not need to be typewritten, but must be legible if handwritten. All written pleadings submitted to this Court must be on 8 ½ x 11 paper with reasonable margins and spacing. Please use only one side of the paper. The Court will take into consideration that you are a *pro se* litigant and untrained in drafting legal documents. You should, however, make every effort to state your case in clear, concise terms. See Rules 8 and 10 of the Federal Rules of Civil Procedure.

3. A general form complaint is available on the Court’s website under the forms link. For cases involving the Equal Employment Opportunities Commission (EEOC) and the Social Security Administration, form complaints are also available under the Forms link. These forms are only a tool, and you do not have to use them. You can always write a complaint on your own. Please note that the EEOC’s **Notice of Right to Sue** letter should be attached to the EEOC complaint when filing with the Court. **ALL ORIGINAL DOCUMENTS MUST BE SUBMITTED TO THE COURT AND THEY WILL NOT BE RETURNED TO YOU.** Keep a copy of all submissions for your own records. Copies made for you by the Clerk’s Office will incur a fee as outlined by the District Court Miscellaneous Fee Schedule.

File the Complaint

To initiate a case filing, the plaintiff will file the **COMPLAINT** with the Court. The following must be submitted with the **COMPLAINT**:

- a. **CIVIL COVER SHEET**. The Civil Cover Sheet form is available on the Court's website under the Forms link.
- b. **SUMMONS**. If service is being made by summons, you must complete a separate summons for each defendant. The summons form is available on the Court's website under the Forms link.
- c. **FEE**. A \$400 fee (a \$350 **FILING FEE** plus a \$50 **ADMINISTRATIVE FEE**) is required when filing a complaint.

If paying in cash, the exact amount is required. All checks or money orders should be made payable to: "CLERK, UNITED STATES DISTRICT COURT." Credit cards are also accepted.

IF YOU CANNOT AFFORD TO PAY THE FILING FEE and ADMINISTRATIVE FEE, you may be allowed to have these fees waived. To request a waiver of the fees, you must complete an **APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS** (Form AO 240) and send it to the Court with the **COMPLAINT, CIVIL COVER SHEET, SUMMONS**, and service copies of the complaint for each defendant. The application form is available on the Court's website under the Forms link and must be completed so that the judge can make a determination of your inability to pay the fees. Each of these documents will be reviewed and forwarded to a judge for consideration. If the application is approved, the fees will be waived, and the case will proceed. The judge may or may not order the United States Marshals Service to effectuate service. If the application is not approved, you must pay the filing fee and administrative fee to have the case proceed.

Provide Service of Process

If the judge has NOT issued an order directing the United States Marshals Service to effectuate service, it is the plaintiff's responsibility to have someone serve the summons and complaint on the defendant(s) within 90 days of filing the complaint, thereby notifying them of the case. This may be done in two ways:

- a. **NOTICE & REQUEST FOR WAIVER OF SERVICE**

You may notify non-government defendant(s) of the commencement of the lawsuit by sending each of them a **NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF SUMMONS** (Form AO 398), along with a copy of the **COMPLAINT**, by first-class mail or other reliable means. You must also include a

copy of the **WAIVER OF THE SERVICE OF SUMMONS** (Form AO 399) and a self-addressed return envelope. The notice and waiver forms are available on the Court's website under the AO National Forms link. If the defendant waives service by signing and returning to you the **WAIVER OF THE SERVICE OF SUMMONS** form, you must file the original, signed waiver form with the Court, and the action shall proceed. If the defendant does not waive service, you must accomplish **SERVICE OF PROCESS** on him or her. See Rule 4(d) of the Federal Rules of Civil Procedure for more information.

If the United States is being sued (and its agencies, corporations, or officers) or a state, local, or foreign government, you **CANNOT** use this request for waiver procedure and must accomplish **SERVICE OF PROCESS** by appropriate means.

b. SERVICE OF PROCESS

Accomplishing **SERVICE OF PROCESS** involves serving a copy of the original **COMPLAINT** and a **SUMMONS** on each defendant.

A **SUMMONS** is a document used to notify the defendant of the commencement of the lawsuit and the requirement to appear and answer. The summons must be directed to the defendant and contain the name of the Court, the names of the parties, the name and address of the plaintiff's attorney or the *pro se* plaintiff, and the time within which the rules require the defendant to answer the complaint. You must complete a separate summons for each defendant and present the summons to the Clerk's Office. A deputy clerk will issue the summons by signing and placing the Court's seal on each summons.

If a defendant has not returned a signed "waiver of service of summons" OR the government (federal, state, local, or foreign) is being sued, the original **SUMMONS** issued by the Clerk's Office and a copy of the **COMPLAINT** must be served upon each defendant.

Generally, if you are suing the United States Government, you must serve an original **SUMMONS** and a copy of the **COMPLAINT** on three separate parties: (1) the head of the federal agency you are suing; (2) the United States Attorney for the district; and (3) the United States Attorney General in Washington, D.C.

You can accomplish service of process by having a "disinterested" (non-party) person who is over the age of eighteen hand deliver copies of the summons and complaint to each of the defendants. When using this method of making service of process, the server must complete the Return of Service information on the original summons, and send it to the Court. If the Return of Service is returned to you, you will need to file the original with the Clerk's Office. See Rule 4 of the Federal Rules of Civil Procedure for more information.

For those cases in which the Court has directed the United States Marshals Service to make service, you must prepare a summons and complete a **USM 285 form** for each defendant and provide service copies of all relevant documents to be sent to the Marshal to effectuate service on all defendants. The USM 285 form is available on the Court's website under the Forms link. These service documents must be submitted to the Clerk's Office.

You are responsible for the timely movement of your case once it is filed. **IF SERVICE IS NOT PERFECTED WITHIN 90 DAYS FROM THE DATE THE COMPLAINT IS FILED, YOUR CASE MAY BE DISMISSED.**

After your lawsuit has been filed

The Clerk's Office will assign a Civil Action Number to your case which must be included on all documents you file with the Court. The case will randomly be assigned to a District Judge. You cannot choose the judge. A District Judge may refer your case to a Magistrate Judge to handle different stages of the case.

Once the case has been properly served on the defendant(s), each named defendant responds to the Complaint by filing an Answer or a Motion. The **ANSWER** is the formal written statement by the defendant(s) responding to a **COMPLAINT** by setting forth any defenses and objections to the plaintiff's claims. A **MOTION** is an application or request made to the Court for the purpose of obtaining a ruling or order directing some act to be done in favor of the movant. See Rule 7(b) of the Federal Rules of Civil Procedure.

In most cases, the Court will issue a **SCHEDULING ORDER** or **PRETRIAL ORDER** which sets a timetable with deadlines that the litigants must follow. Failure to meet the deadlines in a scheduling/pretrial order may result in the dismissal of your case. See Rules 26 and 41(b) of the Federal Rules of Civil Procedure.

The **DISCOVERY PERIOD** is the time frame allowed by the Court for plaintiff and defendant(s) to discover facts, research the law, and gather evidence to be presented at a hearing or trial to prove the litigant's position. See Rules 26-37 of the Federal Rules of Civil Procedure.

Other important information

As a *pro se* litigant, you may **not** authorize another person who is not an attorney to pursue your lawsuit for you. While you may receive help from other non-attorneys in drafting your pleadings and other documents, you must personally sign your complaint and all additional papers filed with the Court. If several individuals commence an action together, each person must personally sign the complaint and all additional papers.

Whenever you file a document with the Court, you must **always**:

- a. Provide the correct civil action number of your case on the document.
- b. Sign all documents. Rule 11 of the Federal Rules of Civil Procedure requires that all documents filed with the Court must be signed. A photocopied signature is not acceptable. Place the words “pro se” after your name. Place your address and telephone number on all documents. It is very important that you provide correct contact information in the event that it is necessary to obtain further clarification or advise you of any changes in hearing schedules, etc. If you do not provide the Court with a current phone number, we WILL NOT be responsible for untimely notification of emergency changes in hearing schedules. Furthermore, a case may be dismissed if mail to you is returned as undeliverable at the address you provided.
- c. Send a copy of every document to each of the parties or their attorneys. This should be indicated at the end of the document and is called a **CERTIFICATE OF SERVICE**. The **CERTIFICATE OF SERVICE** is required to be a part of every pleading/document filed with this Court, **with the exception of the complaint**. See Rule 5 of the Federal Rules of Civil Procedure. Set out below is an example of a Certificate of Service for your use:

CERTIFICATE OF SERVICE

I hereby certify that on (DATE), a true and correct copy of the foregoing instrument has been forwarded by first class mail to counsel of record.

(Sign your name above)

- d. File **original, signed** documents with the Clerk’s Office. These documents can be filed in person at the Clerk’s Office or they can be mailed. Documents sent by mail are considered filed when they are received by the Clerk’s Office. Documents sent by fax or email **CANNOT** be accepted for filing.
- e. Listed below is the contact information for each divisional Clerk’s Office:

Abingdon Division:

Address: 180 W. Main Street, Room 104, Abingdon, VA 24210
 Phone Number: 276-628-5116

Big Stone Gap Division:

Mailing Address: P. O. Box 490, Big Stone Gap, VA 24219

Phone Number: 276-523-3557

NOTE: If filing in person, you will need to do so at the Abingdon Division

Charlottesville Division:

Address: 255 W. Main Street, Room 304, Charlottesville, VA 22902

Phone Number: 434-296-9284

Danville Division:

Mailing Address: P.O. Box 1400, Danville, VA 24543

Street Address: 700 Main Street, Room 202, Danville, VA 24541

Phone Number: 434-793-7147

Harrisonburg Division:

Address: 116 N. Main Street, Room 314, Harrisonburg, VA 22802

Phone Number: 540-434-3181

Lynchburg Division:

Address: 1101 Court Street, Suite A66, Lynchburg, VA 24504

Phone Number: 434-847-5722

Roanoke Division:

Address: 210 Franklin Road SW, Suite 540, Roanoke, VA 24011-2208

Phone Number: 540-857-5100

- f. Remove personal identifying information from any document filed with the Court such as dates of birth, names of minor children, social security numbers, taxpayer-identification numbers, financial account numbers, passport numbers, and driver license numbers. This requirement serves to protect your privacy. The responsibility for redacting personal identifiers rests solely with the attorney or with the pro se litigant. The Clerk's Office will not review each pleading for compliance. If you believe that personal identifying information is important to your case, you should list **ONLY** the last four digits of any number, the year of the individual's birth, or the initials of the minor child.

WHAT HAPPENS AT A COURT PROCEEDING?

How is the courtroom set up?

Although each courtroom is slightly different, the courtroom is generally arranged as follows:

- In the front of the courtroom is a large desk area where the judge sits. This is called “the bench.”
- In front of the bench and over to one side is a chair where witnesses sit when they testify. This is called the “witness box.”
- Directly in front of the bench, there will usually be a person seated in front of a small machine. This is the court reporter. The court reporter uses the machine to create a record of everything that is said at the hearing.
- There will often be another person seated in front of the bench. This is the courtroom deputy clerk, who assists the judge. If you need to show a document to the judge during a hearing, you should hand the document to the courtroom deputy or the courtroom security officer, who will then hand it to the judge.
- There may be other court staff members, such as law clerks, seated off to the side.
- In the center of the courtroom in front of the bench is a podium with a microphone. This is where attorneys and parties who do not have attorneys must stand when they speak to the judge.
- At one side of the courtroom, against the wall, there are two rows of chairs. This is the “jury box,” where jurors sit during a trial. During a hearing, court staff may be sitting in the jury box.
- In the center of the courtroom, there will be several long tables with a number of chairs around them. This is where the attorneys and the parties sit during a hearing and during trial. The plaintiff sits at the table that is closest to the jury box. The defendant sits at the table opposite to the plaintiff’s table.
- In the back of the courtroom are several rows of benches where anyone can sit and watch the hearing or trial (unless the judge has restricted public access).

How do I dress, where do I sit, and what do I say?

When attending a court proceeding, it is customary to show respect for the Court by dressing nicely and conservatively. The judge will expect you to be on time. Often the Court has several short hearings scheduled for the same time. When you enter the courtroom, you should sit in the benches in the back of the courtroom until your case is announced. If your case is the only one scheduled, you may sit at the plaintiff's or defendant's table in the center of the courtroom, instead of sitting in the benches at the back of the room. When the judge enters the courtroom, you must stand and remain standing until the judge sits down. When you hear your case announced and are invited to address the Court, go immediately to the podium in front of the bench. You can bring with you any papers to which you may want to refer. When you get to the podium, state your name and indicate whether you are the plaintiff or the defendant. When you speak to the judge, it is customary to refer to the judge as "Your Honor," instead of using the judge's name. Always answer the judge's questions directly and completely and never interrupt the judge when he or she is speaking.

What is a hearing?

A hearing is a relatively formal court proceeding where the parties discuss issues with the judge and have their arguments on the relevant issues heard by the judge. Sometimes witnesses can be presented, but it depends on the legal issues the judge is covering at the particular hearing. Before the hearing, take time to review all of the papers that have been filed that relate to the hearing. The judge will expect you to be able to answer questions about the issues that are being addressed at the hearing and about anything else that has happened in the lawsuit. Bring to Court any papers that you might need to answer the judge's questions.

What should I expect at a hearing?

If the judge is hearing arguments on a motion, the hearing usually goes through the following sequence of events:

- First, the party who filed the motion has a chance to argue why the motion should be granted.
- Second, the opposing party will argue why the motion should be denied.
- Finally, the party who filed the motion has an opportunity to explain why he or she believes the opposing party's argument is wrong.

You should try not to repeat all the arguments that you made in your motion or opposition papers, but instead simply highlight the most important parts. When one party is speaking, the other party should sit at the table. Never interrupt the other party. Instead, always wait until it is your turn to speak, and speak directly to the judge. The judge may ask questions before you begin your argument, and may also ask questions throughout your argument. If the judge asks a question, always stop your argument and

answer the judge's question completely. When you are finished answering the question, you can go back and finish the other points you wanted to make. If the judge asks you a question when you are seated at the table, stand and walk up to the podium before you answer the question. When the judge is finished asking questions, he or she will usually ask if the parties have anything else they want to discuss.

What should I expect at a trial?

If the Court does not dismiss the case or grant a motion for summary judgment, and the parties do not agree to a settlement, then the case will go to trial. Most cases are dismissed or resolved in some way before trial.

If your case goes to trial, it can be tried by the Court or by a jury. If your case is tried by the Court, it is referred to as a "**bench trial**" and no jury is present. The judge will consider all evidence and make a ruling. If your case is tried by a jury, you will go through the process of selecting a jury which is called "**voir dire**." This process allows the judge, you, and counsel for the defendant to ask questions of potential jurors to see if there is a conflict for a juror to fairly and impartially consider the evidence. Once this process is complete, the jurors will be sworn and seated.

After the jury is chosen (or after the judge advises that the bench trial is ready to begin), each party may present an **opening statement**. The purpose of the opening statement is for each party to describe the issues in the case and state what they expect to prove during the trial. An opening statement is neither evidence nor a legal argument. The purpose of the opening statement is to help the jury and the judge understand what you expect the evidence to be and what you consider important.

In either a bench or a jury trial, the plaintiff presents **evidence** first. The Federal Rules of Evidence will determine whether you can present certain factual information to the Court or jury. The evidence will consist of exhibits and the testimony of witnesses—your own testimony, the testimony of people who have agreed to come to court to testify on your behalf, or of people you have subpoenaed to testify. Please refer to Rule 45 of the Federal Rules of Civil Procedure for more information on the issuance of **subpoenas**. You will ask questions of each witness you call to testify, which is referred to as "**direct examination**."

When you are finished with direct examination of your witnesses, each defendant will have a chance to ask questions of the witnesses. This is referred to as "**cross examination**." When the defendant(s) have finished asking questions, you will have another chance to follow up on questions the defendant(s) asked, but you do not get to ask new questions on topics not already discussed. The judge will control this process. The judge, on his or her own or following an objection from a party, will make decisions about whether a question is proper or if an exhibit should be admitted into evidence.

Once you have presented all of your exhibits and witnesses, the defendant will get a chance to present exhibits and witnesses. You will be able to ask questions of defense witnesses also. When the defendant is finished, you will have a chance to put on any

additional witnesses. These are called “**rebuttal witnesses.**” If you have any rebuttal witnesses, you may not ask them any new questions on topics that were not already discussed. You can use rebuttal witnesses to try to show that the testimony of defense witnesses was not accurate.

At the conclusion of all evidence and testimony, the parties will present closing arguments. In closing arguments, the parties take turns summing up their sides. They explain to the jury or judge why they think the evidence presented shows that they should win.

In a jury trial, the judge will prepare **jury instructions**. These are instructions on the law that the jury must apply to the case in making their decision. You and the defense counsel will be consulted on these instructions before they are read to the jury. Once the jury has heard all of the evidence and testimony and listened to the Court’s instructions, they will go to the jury room to talk about the case. Once the jury has reached a decision, which is known as a “verdict,” they will come back into court, and the jury verdict will be read. The judge will then direct the clerk to prepare a judgment based on the verdict.

In a bench trial, the judge will consider all evidence and make a ruling. Many times, the judge will take the case under advisement after the trial has concluded. This means that the judge will issue a written order at a later date. This can sometimes take several months.

NOTICE OF APPEAL

You may appeal a final decision of this Court to the United States Court of Appeals for the Fourth Circuit. The filing fee for an appeal is \$505 unless the Court granted your Application to Proceed Without Prepaying Fees or Costs when your complaint was filed, in which case you generally will not need to pay the filing fee for the appeal. If you paid the filing fee when your complaint was filed but you cannot afford to pay the appeal fee, you may file an “Application to Appeal *In Forma Pauperis*” with the Court of Appeals.

To file an appeal, you must file a **Notice of Appeal** with the Clerk’s Office of this Court, and submit the appropriate filing fee. A Notice of Appeal form is available on the Court’s website under the Forms link and also at the United States Court of Appeals for the Fourth Circuit’s website <http://www.ca4.uscourts.gov/>. All questions regarding your case on appeal should be addressed with the Clerk of the United States Court of Appeals for the Fourth Circuit, Lewis F. Powell, Jr. United States Courthouse Annex, 1100 East Main Street, Suite 501, Richmond, VA 23219-3517.

LEGAL RESEARCH – AN OVERVIEW

The Court would like to provide the *pro se* litigant with some basic information on legal research. This information is not meant to be a complete or comprehensive guide to the law library or to legal research and writing.

Legal Authority is the information used to convince a court how to apply the law to the facts of a case. Legal authority is divided into two classes -- **primary** and **secondary**. There are two sources of primary authority: (1) constitutions, codes, statutes, and ordinances; and (2) court decisions, preferably from the same jurisdiction where the case is filed or from the applicable circuit court of appeals or the United States Supreme Court. Secondary authority, which is not cited except in certain circumstances, is found in legal encyclopedias, legal texts, treatises, law review articles, and court cases in other jurisdictions. **Primary authority** is the most accepted form of authority cited and should be used before any other authority.

Some basic rules of legal research are as follows:

- Give priority to cases from your own jurisdiction, the applicable circuit court of appeals, or the United States Supreme Court.
- Search for the most recent ruling on the subject matter or issue.
- Check the “pocket part” in the back of almost all law books. The pocket part (a paperback supplement) is the most frequently used device for updating law books and looks like a pamphlet tucked inside the back cover.
- Pay attention to dates on books, i.e., the copyright date and the date of pocket parts.
- Citations to court decisions are written with the volume number first, an abbreviation of the title of the case reporter, and the page number, for example, 152 F.2d 967 or 144 U.S. 422. There are certain standards for **citing** (referencing) legal **authority** in your court documents. The most common source of citation standards is A Uniform System of Citation, Nineteenth Edition, published and distributed by The Harvard Law Review Association, Cambridge, Massachusetts. It is more commonly referred to as “The Bluebook.”
- Make certain that the cases you rely on have not been invalidated by a higher court. This can be done in a variety of ways - by checking the citation in a series of books called Shepard’s Citations or by using on-line resources such as “KeyCite” in Westlaw or Shepherd’s in Lexis. Many public law libraries provide patrons with free access to Westlaw or to other on-line legal resources.

RESOURCES:

- Virginia Public Law Libraries:
http://www.courts.state.va.us/courtadmin/library/virginia_public_lib.html

There are several books available in the library that might help guide you through your legal research. Fastcase, Westlaw and LexisNexis on-line research tools are an alternative to books. Please note that the librarians are unable to give you legal advice. Law libraries may also be available in other cities and also at law schools.

- United States Code:
<http://uscode.house.gov/>
<http://www.gpo.gov/fdsys/browse/collectionUSCode.action?collectionCode=USCODE>
- Federal Rules of Practice and Procedure:
<http://www.uscourts.gov/rulesandpolicies/rules.aspx>
<http://www.law.cornell.edu/rules>

For additional information about the federal courts, you may wish to refer to the following publications:

- Inside the Federal Courts:
<http://www.fjc.gov/federal/courts.nsf>
- Welcome to the Federal Courts:
[http://www.fjc.gov/public/pdf.nsf/lookup/WelFedCt.pdf/\\$file/WelFedCt.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/WelFedCt.pdf/$file/WelFedCt.pdf)
- Federal Courts and What They Do:
[http://www.fjc.gov/public/pdf.nsf/lookup/FCtsWhat.pdf/\\$file/FCtsWhat.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/FCtsWhat.pdf/$file/FCtsWhat.pdf)
- Understanding the Federal Courts:
<http://www.uscourts.gov/understand03/>

GLOSSARY OF COMMON LEGAL TERMS

Answer - The formal written statement by a defendant in a civil case that responds to a complaint, articulating the grounds for defense.

Appeal - A request made by a party that has lost on one or more issues to have a higher court review the trial court's decision to determine if it was correct. To make such a request is "to appeal" or to "take an appeal." The one who appeals is called the "appellant," and the opposing party is the "appellee."

Brief - A written statement submitted in a trial or appellate proceeding that explains one side's facts and legal arguments.

Caption - A formatted heading on the first page of every document filed with the court, listing the parties, the name of the case, and other identifying information.

Caption Page - The cover page of a document containing the caption. It is always the first page of any document a party to a lawsuit files with the court.

Cause of Action – A legal claim.

Clerk of Court – The court officer who oversees administrative functions, especially managing the flow of cases through the court.

Complaint - A written statement filed by the plaintiff that initiates a civil case, in which the plaintiff details the claims against the defendant and requests relief from the court.

Court Reporter - A person who makes a word-for-word record of what is said in court, generally by using a stenographic machine, shorthand, or audio recording, then produces a transcript of the proceedings upon request.

Damages – Money that a defendant pays a plaintiff in a civil case if the plaintiff has won. Damages may be compensatory (for loss or injury) or punitive (to punish and deter future misconduct).

Default Judgment - A judgment awarding a plaintiff the relief sought in the complaint because the defendant has failed to appear in court or otherwise respond to the complaint.

Defendant - An individual (or business) against whom a lawsuit is filed.

Deposition - An oral statement made before an officer authorized by law to administer oaths. Such statements are often taken to examine potential witnesses, to obtain discovery, or to be used later in trial.

Discovery - Procedures used to obtain disclosure of evidence before trial.

Dismissal with Prejudice - Court action that prevents an identical lawsuit from being filed later.

Dismissal without Prejudice - Court action that allows a party to refile its claim.

Docket - A log containing the complete history of each case in the form of brief chronological entries summarizing the court proceedings.

File - To place a paper in the official custody of the clerk of court to enter into the files or records of the case.

In forma Pauperis - “In the manner of a pauper.” Permission given by the court to a person to file a case without payment of the required court fees because the person cannot pay them.

Issue – 1. The disputed point between parties in a lawsuit. 2. To send out officially, as in a court issuing an order or the clerk issuing a summons.

Judgment - The official decision of a court finally resolving the dispute between the parties to a lawsuit.

Jurisdiction - The legal authority of a court to hear and decide a certain type of case. It is also used as a synonym for venue, meaning the geographic area over which the court has territorial jurisdiction to decide cases.

Litigation - A case, controversy, or lawsuit. Participants (plaintiffs and defendants) in lawsuits are called **litigants**.

Magistrate Judge - A judicial officer of a district court, who conducts initial proceedings in criminal cases, decides criminal misdemeanor cases, conducts many pretrial civil and criminal matters on behalf of district judges, and decides civil cases with the consent of the parties.

Moot - Not subject to court ruling because the controversy has not actually arisen or has ended.

Motion - A request by a litigant to a judge for a decision on an issue relating to the case.

Opinion - A judge’s written explanation of the decision of the court.

Plaintiff - A person or business that files a complaint with the court.

Pleadings - Written statements filed with the court that describe a party’s legal or factual assertions about the case.

Procedure - The rules for conducting a lawsuit; there are local rules, rules of civil procedure, criminal procedure, evidence, bankruptcy, and appellate procedure.

Sanction - A penalty or other type of enforcement used to bring about compliance with the law or with rules and regulations.

Statute of Limitations - A time within which a lawsuit must be filed. The deadline can vary depending on the type of claim.

Subpoena – A command, issued under authority of a court or other authorized government entity, ordering a witness to appear and give testimony or produce documents.

Summary Judgment - A decision made on the basis of statements and evidence presented for the record without a trial. It is used when it is not necessary to resolve any factual disputes in the case. Summary judgment is granted when—on the undisputed facts in the record—one party is entitled to judgment as a matter of law.

Transcript - A written, word-for-word record of what was said, either in a proceeding such as a trial, or during some other formal conversation, such as a hearing or oral deposition.

Venue - The geographic area in which a court has jurisdiction. A change of venue is a change or transfer of a case from one judicial district to another.

Additionally, the Administrative Office of the United States Courts has compiled a glossary of common legal terms that might be helpful to you during this process. It can be accessed at: <http://www.uscourts.gov/Common/Glossary.aspx>

SCHEDULE OF REVISIONS TO PRO SE HANDBOOK

DATE	Page Number and Change
December 1, 2015	Pages 15 and 17. Amendment to FRCP 4(m) reduced the amount of time plaintiff has to serve the complaint from 120 days to 90; text changed to reflect new time period.
September 14, 2016	Page 24. Updated the amount of the appeal filing fee.